



Virginia
Regulatory
Town Hall

Notice of Intended Regulatory Action
Agency Background Document

Agency Name:	Virginia Department of Mines, Minerals, and Energy
VAC Chapter Number:	4 VAC 25-30
Regulation Title:	Minerals Other Than Coal Surface Mining Regulations (Repeal)
Action Title:	Preliminary Notice of Regulatory Action (Pre-NOIRA)
Date:	February 13, 2001

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

The Department of Mines Minerals and Energy is proposing to promulgate the Reclamation Regulations for Mineral Mining to ensure the most beneficial development of mineral resources and to minimize the effect of mining on the environment. This regulation (4 VAC 25-31) will replace the present reclamation regulations, 4 VAC 25-30 Minerals Other Than Coal Surface Mining Regulations.

The revision is necessary because of extensive formatting changes in present regulatory requirements. The regulation addresses general requirements, permit standards, bonding, and general performance standards for surface mineral mining, and enforcement.

Amendments to the regulation were needed to address industry changes and changes in technology, eliminate duplicative or nonessential requirements, clarify and strengthen current requirements and establish new requirements. The amended regulation will help to ensure that surface mineral mines are reclaimed in a manner supportive of future use.

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.

The DMME derives its authority to promulgate this regulation from Sections 45.1-161.3 and 45.1-180.3.

Section 45.1-161.3 gives DMME the authority to promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under this title and other relevant chapters, which regulations shall be promulgated by the Department, the Chief, or the Director, as appropriate, in accordance with the provisions of Article 2 of the Administrative Process Act.

Section 45.1-180.3, Authority of the Director; states that the authority to promulgate rules and regulations to effectuate the provisions and the policy of this chapter and the authority to adopt definitions for use in interpreting this chapter are vested in the Director.

Substance

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.

The regulation is needed to ensure environmentally sensitive mining methods are used during active mining operations and to reclaim mined land in order to preserve public health, safety and physical property.

The regulation defines and incorporates proper engineering practices to be used in the reclamation of mined land. It is important that specific procedures are implemented and maintained as to provide for the most beneficial use of post mine land.

The amended regulation (Reclamation Regulations for Mineral Mining, 4 VAC 25-31) has substantial changes as recommended by the mineral mining regulatory work group and is proposed to replace the Minerals Other Than Coal Surface Mining Regulations, 4 VAC 25-30. The regulation is re-organized to improve clarity and understanding. It incorporates the most recent mine industry engineering practices and the most recent practices involving environmental protection and sediment and erosion controls. Additionally, this regulation considers the impact

of mineral mining and the proper management and protection of natural resources, including surface and ground water.

The regulation is written to ensure compliance by mine operators, employees, contractors, and other persons performing mine reclamation activities. The new regulation removes many required drainage and reclamation practices from the current revegetation guidelines and Drainage Handbook and places the essential requirements in the rule. The guidelines and Handbook will be eliminated. A new Mineral Mine Operator's Manual will provide guidance on mineral mining practices. The new regulation is designed to be more performance based and less prescriptive. The regulation exempts certain farming and construction work, coal mining, prospecting and geological investigations, government agency excavation and construction, and certain types of surface mineral extraction consistent with the mineral mining reclamation law.

Part I of the regulation defines and outlines rules and matters related to mineral mining.

Part II of the regulation is updated to clearly define new and permit renewal standards, fees, mining plans, maps, and associated materials required of the operator before commencing surface mining operations. It also outlines pre-mining requirements in a manner to ensure proper reclamation and to allow for appropriate post mining use.

Part II also sets forth requirements for the proper notification of the owners of property adjacent to a proposed mineral mine.

Part III sets forth the requirements for bonding of mineral mines, types of bonds, amount of bond, bond release, and bond forfeiture. The section also outlines participation of an operator in the Minerals Reclamation Fund (MRF).

Part IV of the regulation contains reclamation performance standards, or those engineering and agricultural requirements that the operator uses to comply with operational standards and post mining land use. This section addresses the protection of sensitive features, signs, roads, construction standards, maintenance, grading and the proper treatment and handling of mine overburden, spoils, and fill materials.

The section also addresses how the operator will manage streams, surface drainage, water storage and runoff. Lastly, the section defines final site stabilization and site revegetation.

Part V addresses enforcement orders and informal and formal hearing processes.

This regulatory action should benefit the public by enhancing the proper use, development, and reclamation of mined lands in a manner that is protective of the health, safety and welfare of citizens of the Commonwealth. This regulation is a revision of 4 VAC 25-30, Minerals Other Than Coal Surface Mining Regulations.

Alternatives

Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.

Review of this regulation includes work conducted by a regulatory work group committee. Alternatives for each section of the regulation were considered. Some parts of the regulation were considered for elimination, most were found to be of value. These included the scope of the regulation, inspections, and modifications.

An alternative to the revegetation guidelines and the drainage handbook that are part of the current regulations was to place all essential performance based requirements into the regulation, and eliminate the guidelines and handbook. A new Mineral Mine Operator's Manual will be developed to use as a reference when needing mine reclamation guidance. DMME did not accept as an alternative, leaving these prescriptive standards in the regulation

Permit standards in 4 VAC 25-31, Part II now reflect changes over the present regulation 4 VAC 25-30 to cover contiguous areas covered by a single permit for a single operator. The operator is able to review maps and plans in the field with the inspector, prior to submittal of the permit application. In addition, changes were made to clarify that mineral mining permits do not supersede, prevent enforcement, or effect any other law of federal, state or local governments.

Reorganizing and clarifying the present section on permit applications was recommended by the work committee. These requirements are being included in the new Part II, Permit Standards. The information is reorganized into a section called permit fee and bond. This in addition to the sections on mapping, plans, boundaries, notifications and boundaries were combined under the amended regulation. It is proposed that the permit fee and bond section reflect that fees be submitted upon receipt of billing.

Map information related to critical and sensitive areas was clarified so the operator could more easily understand and use the information. Consolidation of information, mostly pertaining to notification of property owners, code requirements, and performance standards, i.e., drainage and erosion control, further combines efforts by the regulatory work group and the agency to make permit applications more clear for the permittee.

The section regarding permit renewals and surety adjustments, Part V of 4 VAC 25-30, was revised to reflect consistent regulatory requirements. For example, the requirement for annual progress reports and maps was revised to enable the operator to submit a certification at renewal, 4 VAC 25-31-210, rather than to submit new progress reports and maps, provided there are no substantive changes. This is similar to the old map submittal requirement in 4 VAC 25-30-240.

In 4 VAC 25-31, Part II, the bonding requirement in 4 VAC 25-31-210 requires submittal before the mine area is disturbed rather than 30 days after notification by the director at time of renewal. The section also was revised to meet current code requirements and to be consistent with the agency' bonding and reclamation requirements.

It was recommended as an addition to Part III of the regulation in 4 VAC 25-31-280, that prior to release of a bond, all requirements for reclamation be satisfied. It also provides that the reclaimed land be able to support an approved post mine use. Additionally, language in Part III was updated for clarity and consistency with other sections in the regulation and to reflect updated bonding requirements of the Minerals Reclamation Fund.

The present Parts VI through IX (4 VAC 25-30-300 through 4 VAC 25-30-570) are incorporated alternately as the new Part IV (4 VAC 25-31-330 through 4 VAC 25-31-550) on Performance Standards. It incorporates the use of mining terminology that lends itself to the protection of sensitive features and protected structures. The section on maintenance is being kept in the regulation as recommended by the work committee to provide additional guidance to the regulated community with respect to drainage and road systems. An alternative to establishing vegetative cover as stated in 4 VAC 25-30-330 was recommended in the new section on abandonment, 4 VAC 25-31-350 (D). It was reworded to address post mining land use standards.

An alternative for the completion of active mining section, 4 VAC 25-30-400, was to rewrite the language to reflect a desired result rather than the prescriptive method of reclamation. This change would address water protection, post mining land use and slopes through proper handling of spoil piles, stockpiles, and treatment of acid materials.

The alternative of placing performance requirements into the regulations, and eliminating the current prescriptive revegetation guidelines and drainage handbook was recommended. A new Mineral Mine Operator's Manual will allow the mine operators to obtain relevant guidance on mining and reclamation practices. This change would cover diversions, haulways/roads, sediment control, overburden/spoil disposal, stream channels, land grading, refuse disposal and handling, subsurface drains, and impoundments. Gabions, concrete, and shotcrete are added to riprap in the new regulation (4 VAC 25-31-510) as an alternative method of stabilization to vegetation (4 VAC 25-30-510) for erosion control.

Family Impact Statement

Please provide a preliminary analysis of the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The purpose of the promulgation the regulation, Reclamation Regulations for Mineral Mining, 4 VAC 25-31, is to replace the Minerals Other Than Coal Surface Mining Regulations, 4 VAC 25-30. This will not have a negative impact on the institution of the family or on family stability. Ensuring that mined land is properly reclaimed and returned to beneficial use should have a positive effect on the family by protecting the environment in the areas around mine sites.